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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SHERILL FOSTER, HOWARD FOSTER,
SHEILA BURTON, and MINNIE BURTON,

Plaintiff,

vs.

SHANNON EDMONDS, LORI TYLER,
COUNTY OF LAKE; CITY OF
CLEARLAKE, and DOES 1 through 100,

Defendants

Case No.: C-07-5445 EMC

**DEFENDANT LAKE COUNTY'S,
NOTICE OF MOTION TO DISMISS
PURSUANT TO F.R.C.P. RULE
12(b)(6)**

**DATE: May 21, 2008
TIME: 10:30 a.m.
CTRM: C**

TO PLAINTIFFS AND THEIR ATTORNEY OF RECORD:

Notice is hereby given that on the above-noted date at the stated time and in the designated courtroom, Defendant COUNTY OF LAKE, by and through their attorneys of record, will move this court for dismissal of the First Amended Complaint of Plaintiffs SHERILL FOSTER, HOWARD FOSTER, SHEILA BURTON, and MINNIE BURTON (hereinafter collectively "Plaintiffs") pursuant to Fed.R.Civ.P. 12 (b)(6) on the following grounds:

1. Plaintiffs fail to state a claim upon which relief may be granted for Monell-type liability against the COUNTY OF LAKE pursuant to 42 U.S.C. section 1983 arising from alleged violation(s) of the Ninth Amendment;

2. Plaintiffs fail to state a claim upon which relief may be granted for Monell-type liability against the COUNTY OF LAKE pursuant to 42 U.S.C. section 1983 arising from alleged violation(s) of the Fourth Amendment;

3. Plaintiffs fail to state a claim upon which relief may be granted for Monell-type liability against the COUNTY OF LAKE pursuant to 42 U.S.C. section 1983 arising from alleged violation(s) of the Fourteenth Amendment;

4. Plaintiffs fail to state a claim upon which relief may be granted for Monell-type liability against the COUNTY OF LAKE pursuant to 42 U.S.C. section 1983 arising from any post-death conduct because such was not the proximate cause of any constitutional injury;

5. Assuming the court dismisses the federal claims, Defendants request the court decline to exercise supplemental jurisdiction over the state-based claims;

6. Assuming the court retains jurisdiction over the state-based claims, Plaintiffs fail to state a claim upon which relief may be granted for failure to allege compliance with the California Claims Act, California Government Code sections 900 et seq.

The Motion to Dismiss is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities in support thereof, Request for Judicial Notice in support thereof, the entire court file and any other pleadings or evidence which may be presented at the time of the hearing.

Respectfully submitted,

Dated: April 10, 2008

PORTER SCOTT
A PROFESSIONAL CORPORATION

/s/ John R. Whitefleet

By _____
Terence J. Cassidy
John R. Whitefleet
Attorney for Defendant
COUNTY OF LAKE